

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0340

Affirmed
Late Requests for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On February 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 162616). On March 13, 2014, decision # 162616 became final without a request for hearing having been filed. On June 11, 2014, the Department served notice of an administrative decision (decision # 95510) assessing a \$448 overpayment for the week of February 9 to February 15, 2014 (week 7-14) based on decision # 162616. On July 1, 2014, decision # 95510 became final without a request for hearing having been filed. On February 3, 2015, claimant filed untimely requests for hearing on both decisions.

On February 11, 2015, ALJ Kangas issued Hearing Decision 15-UI-33386, which dismissed claimant's hearing request regarding decision #162616 as untimely, and Hearing Decision 15-UI-33387, which dismissed claimant's hearing request regarding decision #95510 as untimely. Both Hearing Decisions offered claimant the right to renew his hearing requests by submitting responses to the "Appellant Questionnaires" attached to the hearing decisions within 14 days of the date the decisions were mailed.¹

On February 25, 2015, the Office of Administrative Hearings (OAH) received claimant's response. Also on February 25, 2015, claimant also filed an application for review with the Employment Appeals Board (EAB). On March 4, 2015, ALJ Kangas reviewed claimant's response and issued Hearing Decision 15-UI-34447, cancelling Hearing Decision 15-UI-33386, and re-dismissing claimant's January 30, 2015 request for hearing on the voluntary quit decision, #162616. On March 10, 2015, claimant filed an additional application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not

¹ Hearing Decisions, 15-UI-33386 and 15-UI-33387.

part of the record because it was not submitted to the ALJ in claimant's responses to the "Appellant Questionnaires." Claimant failed to show that factors or circumstances beyond his reasonable control prevented him from presenting this information to the ALJ. See OAR 471-041-0090 (October 29, 2006). We considered only information that is part of the hearing record when reaching this decision. See ORS 657.275(2).

OAH did not consider claimant's February 25, 2015 response in relation to Hearing Decision 15-UI-33387, even though claimant indicated that he disagreed with the Department's decision that he had been overpaid benefits. In accordance with the authority granted to us under ORS 657.275(2), we will review *de novo* both hearing decisions dismissing claimant's late requests for hearing – 15-UI-34447 and 15-UI-33387. Pursuant to OAR 471-041-0095 (October 29, 2006), our review of these hearing decisions is consolidated. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0276 and 2015-EAB-0340).

Under ORS 657.269, a request for a hearing must be filed within 20 days from the date that administrative hearing was mailed to the last known address of a claimant. This 20-day time limit can be extended upon a showing of good cause for failing to file a timely hearing request. ORS 657.875. "Good cause" exists if the untimely filing was caused by an excusable mistake or factor beyond an individual's reasonable control.

In his February 25, 2015 response, claimant stated that he did not timely file his hearing requests because he never received the decisions at issue. In regard to decision # 16216, claimant explained that he was "in the hospital having my knee replaced from Feb 17-22, 2014" and then "back in the hospital March [illegible] -14th." DR Exhibit 3 at 7-8. Claimant provided no additional details, e.g., problems he had with his mail because of his hospitalization or because of other reasons, or difficulties he experienced because his family members were unable or unwilling to receive and save his mail while he was incapacitated. In regard to decision # 95510, claimant explained that he learned about it in August 2014, when he contacted a Department employee who said he would file an appeal for claimant. *Id.* Claimant offered no information, however, regarding specific circumstances that may have prevented him from receiving a decision mailed on June 11, 2014. Without such information, we have no reason to conclude that claimant's failure to timely file his hearing requests resulted from circumstances beyond his reasonable control.

Based upon our review of the entire hearing record and on *de novo* review in accordance with ORS 657.275(2), the hearing decisions under review are affirmed.

DECISION: Hearing Decisions 15-UI-34447 and 15-UI-33387 are affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: March 30, 2015

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. See ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem,

Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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